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**GRANT AGREEMENT
BETWEEN THE METROPOLITAN COUNCIL AND
CITY OF BLOOMINGTON
FOR RECREATION OPEN SPACE DEVELOPMENT**

FINANCE

Grantee:	City of Bloomington	SG-2012-035
Address:	Randy Quale Bloomington Parks and Recreation 1800 West Old Shakopee Road Bloomington, MN 55431	
Development Project:	At Hyland-Bush-Anderson Lakes Park Reserve, construct/reconstruct bituminous trails at the Normandale Lake Park Unit – approximately 225 linear feet of new trails and 2,119 linear feet of reconstructed trails for a total of 2,344 linear feet.	
Grant Amount:	\$189,000.00	Council Action: June 27, 2012
Council Bonds:	\$ 48,000.00	
State Bonds:	\$141,000.00	
Grant Period:	July 1, 2012 – December 31, 2016	Effective Date: Final execution by both parties.
Grant Manager:	Arne Stefferud Metropolitan Council 390 North Robert Street St. Paul, MN 55101 (651) 602-1360 arne.stefferud@metc.state.mn.us	

AGREEMENT

THIS AGREEMENT is made and entered into on the Effective Date by and between the Metropolitan Council (“the Council”) and the City of Bloomington (“the Grantee”).

WHEREAS, the Council is authorized by Minnesota Statutes section 473.301 *et seq.* to make grants to eligible governmental units situated wholly or partly within the metropolitan area for the purpose of development of regional recreation open space in accord with the Council’s Recreation Open Space Policy Plan; and

WHEREAS, the Grantee is a governmental unit eligible for a Recreation Open Space Development Grant; and

WHEREAS, the Minnesota Legislature by Minnesota Laws 2012, chapter 293, section 17, subdivision 2, appropriated state general obligation bonds to the Council for

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the costs of improving and bettering the metropolitan regional parks system ("State Bond Appropriation"); and

WHEREAS, the Grantee has applied to the Council for a Recreation Open Space Development Grant to assist in the development of recreation open space lands; and

WHEREAS, the proposed development is consistent with the Council's Policy Plan and with the Approved Master Plan for the Park; and

NOW, THEREFORE, the Council and the Grantee agree as follows:

I. DEFINITIONS.

1.01 "Approved Master Plan" means the master plan for the Park required and approved by the Council.

1.02 "Park" means the regional park, park reserve, trail corridor, or special recreation feature in which the Development Project is to be performed.

1.03 "Policy Plan" means the regional recreation open space system policy plan, including the capital improvement program for recreation open space, required by Minnesota Statutes section 473.147.

1.04 "Development Project" means the planning, engineering, constructing, landscaping, and finishing of the development described on page one.

1.05 "Reimbursement" means the Grantee will expend its own funds and provide to the Council acceptable documentation that the expenditure has been made before seeking payment under this agreement for the expenditure.

II. GRANT AMOUNT, GRANT PERIOD, AND PAYMENT OF PROCEEDS.

2.01 Grant Amount. The Council agrees to make available to the Grantee during the grant period a grant of up to **\$189,000.00** of which **\$48,000.00** are Council bond proceeds and **\$141,000.00** are proceeds from the State Bond Appropriation. This amount is granted for the purpose of performing the Development Project. In no event will the Council's obligation under this agreement exceed the total grant amount. The Council shall bear no responsibility for any cost overruns that may be incurred by the Grantee in the performance of the Development Project.

2.02 Grant Period. The grant period shall commence on July 1, 2012, and remain in full force and effect until December 31, 2016, or until all Grantee obligations set forth in this agreement have been satisfactorily fulfilled and the Grantee's final report is received and accepted by the Council, whichever occurs first. After that date, all grant funds that have not been expended shall revert to the Council.

2.03 Acknowledgment. The Grantee acknowledges that this grant is financed using state bond funds and is therefore subject to the requirements of Minnesota Statutes section 16A.695 and the *Third Order Amending Order of Commissioner Relating to Use and Sale of Bond Financed Property*, which are attached hereto and incorporated herein to this grant as **Exhibit A** ("the Additional Provisions"). The requirements in the Additional Provisions are in addition to and do not supplant requirements found elsewhere in this agreement. If any requirement in the Additional Provisions is inconsistent with a provision found elsewhere in this agreement and is irreconcilable with such provision, the requirement in the Additional Provisions shall prevail.

2.04 Requests for Reimbursement. To obtain reimbursement under this agreement, the Grantee shall provide the Council with evidence that the portion of the Project for which payment is requested has been satisfactorily completed. The Council will make the final determination whether the expenditures are eligible for reimbursement under this agreement and verify the total amount requested from the Council. Reimbursement of any cost is not to be construed as waiver by the Council of any Grantee noncompliance with this agreement.

The Grantee shall submit reimbursement requests to the Council's authorized contact person who will process the request and, if necessary, forward it to Minnesota Management and Budget for final approval and disbursement of state appropriated funds to the Council. The Council will make payment to the Grantee only after receipt of funds from the Appropriation. The Grantee shall submit reimbursement requests to the Council once every three (3) months of the grant period for grant eligible costs paid during the previous period. The Council will not approve requests for reimbursement unless the Grantee is current in its obligations for filing status reports to the Council as described in article V of this agreement.

All documentation of expenditures to be reimbursed out of Council bond proceeds shall be submitted in a form acceptable to the Council. The Council shall reimburse all grant eligible expenditures not in excess of the total amount of Council bond proceeds granted under this agreement within thirty (30) days of the receipt of satisfactory documentation from the Grantee. The documentation shall be subject to review and acceptance or rejection by the Council's Regional Administrator. Documentation shall be deemed to be accepted if it is not rejected in writing within ten (10) working days of receipt.

A final reimbursement request for this Project must be received by the Council's contact person by January 31, 2017. *No facsimile transmissions of reimbursement requests will be accepted.* Requests received after this date may not be eligible for reimbursement. No reimbursements will be awarded under this agreement for work done after December 31, 2016. If authorization for the Project is extended by the Legislature, or the council for the Council funded portion, this agreement and the Appropriations may not be canceled until the new expiration date.

2.05 Council Fund Requirement. Notwithstanding anything to the contrary in this agreement, the payment of grant proceeds shall be made by the Council within the time frames specified in this article only if the Council has adequate parks and open space grant funds on hand at the time that payment is due. Also, the Grantee recognizes that this grant is funded, in part, by state bond proceeds. The Grantee acknowledges that Council payments of state-appropriated funds are contingent upon timely transfer of the funds to the Council from the State.

2.06 Declaration as to Use of State Bond Proceeds. When state bond proceeds are used to acquire or improve real property in whole or in part, the Grantee shall cause to be recorded in the official real estate title records maintained by the county recorder for the county in which the property is located, the following declaration:

The Property is bond financed property within the meaning of Minn. Stat. § 16A.695 as amended, and cannot be sold, mortgaged, or otherwise disposed of by the public officer or agency which has jurisdiction over it or owns it without the approval of the Minnesota Commissioner of Finance, which approval must be evidenced by a written statement signed by the Commissioner of Finance and attached to the deed, mortgage, or instrument used to sell, mortgage, or otherwise dispose of the Property.

Title to the property shall remain subject to this restriction until (i) the restriction has been fully complied with as evidenced by a written approval from the Minnesota Commissioner of Finance, or (ii) a written release, releasing the property from the restriction, signed by the Minnesota Commissioner of Finance, is recorded in the real estate records relating to the property. This declaration shall be made in substantially the form attached to this agreement as part of the Additional Provisions in **Exhibit A, Attachment 1.**

The Council has the ability to withhold payment of the grant proceeds unless and until the Declaration has been filed with the county recorder for the county in which the property is located.

2.07 Sustainable Building Guidelines for New Buildings; Alternative Energy Sources. The Grantee acknowledges that this grant is financed using state bond funds and therefore the Grantee's Project may be subject to the requirements of Minn. Stat. § 16B.325 and Minn. Stat. § 16B.32. The Departments of Administration and Commerce have developed sustainable building design guidelines for all new state buildings. The objective of the guidelines concerns the energy efficiency of new state buildings. Minn. Stat. § 16B.325 specifies that these guidelines "*...are mandatory for all new buildings receiving funding from the bond proceeds fund after January 1, 2004.*" All new state buildings funded on January 1, 2004 and later must follow the sustainable building guidelines and exceed the Energy Code by thirty percent. For projects that are to construct a new building, or to renovate at least half of an existing building, Minn. Stat. § 16B.32 requires the commissioner of administration to include designs that utilize

active and passive solar energy systems, earth sheltered construction, and other alternative energy sources where feasible.

2.08 Design Review by Legislative Committee Chairs; Pre-design Review by the Department of Administration. The Grantee acknowledges that this grant is financed using state bond funds and therefore the Grantee's Project may be subject to the requirements of Minn. Stat. § 16B.335. Minn. Stat. § 16B.335, subd. 1(a), restricts a recipient of a capital appropriation from preparing "... *final plans and specifications for any construction, major remodeling, or land acquisition in anticipation of which the appropriation was made until the agency that will use the project has presented the program plan and cost estimates for all elements necessary to complete the project to the chair of the senate finance committee and the chair of the house ways and means committee and the chairs have made their recommendations, and the chair of the house capital investment committee is notified.*" Paragraph (b) of this same statute exempts certain types of projects from the legislative design review requirements. These include: demolition or decommissioning of state assets, hazardous material projects, utility infrastructure projects, environmental testing, parking lots, exterior lighting, fencing, highway rest areas, truck stations, storage facilities not consisting primarily of offices or heated work areas, roads, bridges, trails, pathways, campgrounds, athletic fields, dams, floodwater retention systems, water access sites, harbors, sewer separation projects, water and wastewater facilities, port development projects for which the commissioner of transportation has entered into an assistance agreement under section 457A.04, ice centers, a local government project with a construction cost of less than \$1,500,000, or any other capital project with a construction cost of less than \$750,000.

Minn. Stat. § 16B.335, subd. 3, specifies a pre-design requirement. Most agencies and grantees are required to prepare pre-design documents for review by the Department of Administration before proceeding with design work. The *Predesign Manual for Capital Budget Projects (Fourth Edition)* is posted on Administration's Construction Services website, and can be accessed through the following link:

www.admin.state.mn.us/recs/cs/predesign/4thedition/PDM4thE.pdf

Grantee acknowledges that it has reviewed this statute in its entirety and will, if applicable, comply with the requirements of this section.

2.09 One Percent for Art. The Grantee acknowledges that this grant is financed using state bond funds and therefore the Grantee's Project may be subject to the requirements of Minn. Stat. § 16B.35. Minn. Stat. § 16B.35 allows an appropriation "*for the construction or alteration of any state building*" to include up to one percent for the acquisition of works of art for the public spaces of the building or its grounds. This "1% For Art" provision defines a state building as one where the construction or alternation is paid for, wholly or in part, by the state. The "1% For Art" provision, does not apply to projects where the state funding is less than \$500,000; and projects where the commissioner of administration has determined that the provision is inappropriate

2.10 Prevailing Wages. The Grantee agrees to comply with all of the applicable provisions contained in Chapter 177 of the Minnesota Statutes, and specifically those provisions contained in Minn. Stat. §§ 177.41 through 177.435 that exists as of the date of this Agreement and as such may subsequently be amended, modified or replaced from time to time with respect to the Project and the operation of the state program. By agreeing to this provision, the Grantee is not acknowledging or agreeing that the cited provisions apply to the Project or the operation of the state program.

III. AUTHORIZED USE OF GRANT PROCEEDS.

3.01 Use of Funds. The Grantee shall use the proceeds of this grant only for eligible costs of the Development Project as described on page 1 of this agreement in accordance with the estimated project budget described in Section 3.02, and in accordance with what are grant eligible costs as defined in Section 3.03.

3.02 Estimated Project Budget. The Grantee shall submit to the Metropolitan Council's authorized contact person, an Estimated Project Budget for the Development Project as a condition for receiving payments from the grant for completed work on the Development Project. The Estimated Project Budget shall include the following information:

- 1) Date of submittal to the Metropolitan Council.
- 2) Number of this grant agreement.
- 3) Grantee name (agency or government entity name).
- 4) Contact person for Grantee (name, address, phone number, e-mail).
- 5) Project description as stated in the State appropriation law which is shown on page 1 of this agreement.
- 6) Estimated construction costs to be funded with this grant consistent with the project description.
- 7) Estimated external professional services costs to be funded with this grant consistent with the project description.
- 8) Estimated internal professional services costs to be funded with this grant consistent with the project description.
- 9) Other estimated costs not included above to be funded with this grant that are consistent with the project description. Please describe what those other costs are.
- 10) Cumulative Total of items 6, 7, 8 and 9. The Cumulative Total should not exceed the grant amount.

The Grantee should update the Estimated Project Budget as actual costs are known and submit the Updated Estimated Project Budget to the Council's authorized contact person. If the actual costs exceed this grant amount, the Grantee is responsible for obtaining funds beyond what is provided in this grant to cover those additional costs.

3.03 Eligible Costs. Eligible costs are those costs *directly* incurred by the Grantee for Development Project activities that are *solely related* to and necessary for the completion of the Development Project, as described in the Development Project during the appropriation period. The Grantee shall not be reimbursed for non-eligible costs. Any cost not defined as an eligible cost or not included in the Development Project or approved in writing by the Council is a non-eligible cost.

3.04 Administration and Supervision. The Grantee shall be responsible for the administration, supervision, management, and oversight of the Project that may be required for the work performed under this agreement. The Grantee may employ such professional services as it deems reasonable and necessary to provide these services, subject to the provisions of paragraph 3.03. The Grantee or anyone providing these professional services is responsible for adhering to *all* provisions of paragraph 3.03.

3.05 Regional Use. The Grantee agrees to develop, operate, and maintain the Park in a manner consistent with the Regional Park Policy Plan and the park unit's Approved Master Plan, including allowing use of the Park by all persons in the region. The Grantee further agrees that it will not adopt any rules or restrictions hindering or affecting regional use of the Park including, but not limited to, imposing higher fees for non-residents without the express written consent of the Council, either during the grant period or for a period of twenty (20) years following.

3.06 Purchase of Recycled and Recyclable Materials. The Grantee shall use the funds granted under this agreement in compliance with Minnesota Statutes sections 16B.121 to 16B.123 requiring the purchase of recycled, repairable, and durable materials, the purchase of uncoated paper stock, and the use of soy-based ink, the same as if it were a state agency. The Grantee shall ensure that all contractors paid with funds reimbursed under this agreement comply with this requirement. Any deliverables submitted to the Council will be rejected if not in compliance and the reports will be deemed late or unacceptable.

IV. ACCOUNTING, RECORD, AND AUDIT REQUIREMENTS.

4.01 Separate Account. The Grantee agrees to establish and maintain a separate account for the Development Project and to maintain accurate and complete records and accounts relating to the receipt and expenditure of any and all grant funds. Such accounts and records shall be kept and maintained for a period of at least twenty (20) years following the expiration of the grant or such shorter period as may be specified in writing by the Council at the expiration of the grant period.

4.02 Audit. The above accounts and records of the Grantee shall be audited in the same manner as other accounts and records of the Grantee and may be audited and/or inspected on the Grantee's premises or otherwise by individuals designated or authorized by the Council at any time following reasonable notification during the grant period and for a period of twenty (20) years thereafter.

V. REPORTS.

5.01 Reimbursement Request/Progress Reports. To obtain Reimbursement under this agreement, the Grantee shall submit a Reimbursement Request/Progress Report on forms provided by the Council. Reimbursement Request/Progress Reports may be submitted once per month, but must be submitted at least semi-annually by December 1 and June 1 of each calendar year of the grant period. The Grantee shall describe the financial, construction, and consulting activities undertaken in connection with the grant and shall provide sufficient documentation of grant eligible expenditures and such other information as the Council's staff reasonably requests.

5.02 Final Report. Within two (2) months following the expiration of the grant period, the Grantee shall submit a final report in a format determined by the Council, detailing total Development Project receipts and expenditures, summarizing all Development Project activity, and containing a certification by the Grantee's chief financial officer that all grant funds were expended in accordance with this agreement.

VI. GENERAL CONDITIONS.

6.01 Consultation. The Grantee agrees specifically to review and solicit recommendations and advice from the Council's staff at the earliest possible time if and when the Grantee expects that the following will or may occur:

- A. The costs for any portion of the Development Project will be higher than the Grantee's projected costs for that portion of the Development Project; or
- B. The total cost of the Development Project will exceed the total grant award.

6.02 Compliance With Law. The Grantee agrees to comply with restrictions regarding the use of grant proceeds contained in Minnesota Statutes section 473.301 *et seq.*, and with the provisions of all applicable state and federal laws, including those laws pertaining to the use of bond proceeds. This grant is financed with bonds issued in accordance with Federal arbitrage restrictions. The Grantee will not use the grant funds in any way which would cause the bonds to be classified as "Arbitrage Bonds" under Section 148 of the Internal Revenue Code. The Grantee will not take any action that would adversely affect the exemption from federal income taxation of the bonds or omit to take any action necessary to maintain such tax exempt status. Further, the Grantee agrees that it is the Grantee's obligation and responsibility, and not the Council's, to comply with all other laws, regulations, and rules relating to activities undertaken in performing the Development Project.

6.03 Maximum Use of Other Funds. If the Grantee at any time receives funding or reimbursement from another source for amounts charged by the Grantee

against this grant, such funds charged against this grant shall be immediately refunded to the Council upon discovery of the duplicate funding or reimbursement.

6.04 Liability. Each party agrees that it will be responsible for its own acts and the results thereof to the extent authorized by law and shall not be responsible for the acts of the other party and the results thereof. The Council's liability shall be governed by the Minnesota Municipal Tort Claims Act, Minnesota Statutes chapter 466, and other applicable law. Notwithstanding this provision, to the fullest extent permitted by law, the Grantee shall defend, hold harmless, and indemnify the Council and its members, employees, and agents from and against all claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from clean-up, removal, and disposal of contaminants from the Project property. Claims included in this indemnification include, without limitation, any claims asserted pursuant to the Minnesota Environmental Response and Liability Act (MERLA), Minnesota Statutes chapter 115B, the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) as amended, 42 U.S.C. sections 9601 *et seq.*, and the federal Resource Conservation and Recovery Act of 1976 (RCRA) as amended, 42 U.S.C. sections 6901 *et seq.* This obligation shall not be constructed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which otherwise would exist between the Council and the Grantee. The provisions of this paragraph shall survive the termination of this agreement. The Grantee's obligation to indemnify the Council as stated in this paragraph shall not be construed as a waiver on the part of either the Grantee or the Council of any immunities or limits on liability provided by Minnesota Statutes chapter 466, or other applicable state or federal law.

6.05 Revenue. All revenue generated from or by the Park shall be used by the Grantee only as provided in the Policy Plan. Revenue from recreational uses may be used by the Grantee for any park-related purposes. Revenue from nonrecreational uses of the Park or on land acquired with regional grant funds must be used for land stewardship or for the capital costs of providing regional recreation opportunities. By July 1, 2013, and by July 1st of each year thereafter, the Grantee shall make a written report to the Council detailing all revenue generated from nonrecreational use of the Park during the preceding calendar year, if such revenue exceeds \$2,500, the threshold amount set by the Council. The Grantee shall return to the Council all nonrecreation revenue that is not expended by December 31 of the year following the year in which it was generated.

6.06 Changes in the Development Project. If the Grantee, for any reason, determines that the Development Project or any portion of it should not be undertaken, or that there should be a change in the scope or costs of the Development Project or any portion of it, the Grantee shall submit to the Council's Regional Administrator a statement describing the situation and giving the reasons for the Grantee's determination. The Grantee may, simultaneously with the submission of the statement or within a reasonable time thereafter, recommend alternative projects, activities, uses, expenditures, or allocations of grant funds.

If the Regional Administrator determines that the Grantee's recommendations may be immediately approved according to criteria established by the Council, the Grantee and the Council shall execute a written amendment to this agreement as provided in paragraph 6.07 of this article; however, no further action by the Metropolitan Parks and Open Space Commission or the Council is required to authorize the execution of the amendment by the Council.

If the Regional Administrator determines that the Grantee's recommendations may not be immediately approved according to criteria established by the Council, the Grantee and the Council may execute a written amendment to this agreement only as provided in paragraph 6.07 of this article, following appropriate authorization by the Council and the Grantee.

The Regional Administrator shall inform the Grantee within ten (10) working days following receipt of the Grantee's recommendations whether the recommendations are immediately approved. In determining whether to approve the Grantee's recommendations, the Council shall give full regard to legislative determinations concerning development funding and to the general position that the total grant award herein should ultimately be made available to the Grantee for development.

6.07 Amendments. The terms of this agreement may be changed by mutual agreement of the parties. Changes shall be effective only upon execution of written amendment(s) signed by authorized representatives of the Council and the Grantee.

6.08 Equal Opportunity; Affirmative Action. The Grantee agrees to comply with all applicable laws, rules, and regulations relating to nondiscrimination and affirmative action in public purchase, involvement, and use. In particular, the Grantee agrees not to discriminate against any employee or applicant for employment because of race, color, creed, religion, sex, sexual orientation, national origin, marital status, disability, status with regard to public assistance, membership or activity in a local civil rights commission, or age, and to take affirmative action to insure that applicants and employees are treated equally with respect to all aspects of employment, rates of pay and other forms of compensation, and selection for training. In addition, the Grantee agrees to include affirmative action and equal employment provisions in any written contract entered into after the date of execution of this agreement which involves the provision of work or services which will be paid for in whole or in part out of the grant proceeds.

6.09 Permits, Bonds, and Approvals. The Grantee is responsible for obtaining all applicable local and state licenses, permits, bonds, and authorizations necessary for performing the Development Project.

6.10 Acknowledgments. The Grantee shall appropriately acknowledge the financial assistance provided by the Council in any promotional materials, press releases, reports, and publications relating to the Development Project. Upon completion of the Development Project, the Grantee must post a permanent funding acknowledgement sign in a conspicuous location at the site, including language similar to the following:

Funding for this project was provided through a regional recreation open space grant funded by the Metropolitan Council.

6.11 Termination. This agreement may be terminated by the Council for cause at any time upon seven (7) days' written notice to the Grantee. Cause shall mean a material breach of this agreement and any supplemental agreements or amendments to this agreement. This agreement may also be terminated by the Council in the event of a default by the Grantee or in the event the Legislature rescinds the Appropriation. This agreement may be terminated by the Council or the Grantee at any time with or without cause upon thirty (30) days' written notice to the other party. In the event of such a cancellation, the Grantee shall be entitled to payment determined on a pro rata basis for work or services satisfactorily performed.

6.12 Construction. This agreement is intended to assist in implementing the Policy Plan and shall be interpreted consistently with it.

6.13 Jurisdiction and Venue. Venue for all legal proceedings arising out of this grant agreement, or breach of this grant agreement, shall be in the state or federal court with competent jurisdiction in Ramsey County, Minnesota.

VII. CONTACT PERSONS; PROJECT MANAGER.

7.01. Contact Persons. The authorized contact persons for receipt of notices, reports, invoices, and approvals under this agreement are the following:

The Council:

Name: Arne Stefferud
Title: Planning Analyst Parks
Mailing Address: 390 North Robert Street, St. Paul, MN 55101
Phone: 651-602-1360
E-mail: arne.stefferud@metc.state.mn.us

The Grantee:

Name: Randy Quale
Title:
Mailing Address: Bloomington Parks & Recreation
 1800 West Old Shakopee Road
 Bloomington, MN 55431
Phone: 952-563-8876
E-mail: Rquale@ci.bloomington.mn.us

or such other person as may be designated in writing for itself by either party.

7.02. Council Grant Manager. For purposes of administration of this Agreement, the contact person listed in paragraph 7.01, or such other person as may be designated in writing by the Council's Regional Administrator shall be the Project Manager. Nothing, however, in this Agreement will be deemed to authorize the Council's Project Manager to execute amendments to this agreement on behalf of the Council.

7.03. Grantee Project Manager. For purposes of administration of this Agreement, the contact person listed in paragraph 7.01, or such other person as may be designated in writing by the Grantee, shall be the Project Manager.

IN WITNESS WHEREOF, the parties have caused this agreement to be executed by their duly authorized representatives on or as of the date first above written.

METROPOLITAN COUNCIL

By: 
Director, Community Development


Date: 11-30-12

Approved as to form:

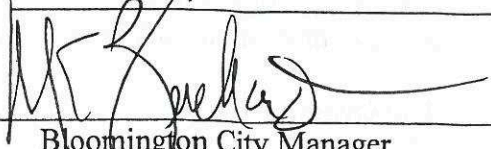
By: 
Bloomington City Attorney

Date: 11-5-12

CITY OF BLOOMINGTON

By: 
Bloomington Mayor

Date: 11/5/12

By: 
Bloomington City Manager

Date: 11/5/12

16A.695 PROPERTY PURCHASED WITH STATE BOND PROCEEDS.

Subdivision 1. Definitions.

(a) The definitions in this subdivision apply to this section.

(b) "State bond financed property" means property acquired or bettered in whole or in part with the proceeds of state general obligation bonds authorized to be issued under article XI, section 5, clause (a), of the Minnesota Constitution.

(c) "Public officer or agency" means a state officer or agency, the University of Minnesota, the Minnesota Historical Society, and any county, home rule charter or statutory city, school district, special purpose district, or other public entity, or any officer or employee thereof.

(d) "Fair market value" means, with respect to the sale of state bond financed property, the price that would be paid by a willing and qualified buyer to a willing and qualified seller as determined by an appraisal of the property, or the price bid by a purchaser under a public bid procedure after reasonable public notice.

(e) "Outstanding state bonds" means the dollar amount certified by the commissioner, upon the request of a public officer or agency, to be the principal amount of state bonds, including any refunding bonds, issued with respect to the state bond financed property, less the principal amount of state bonds paid or defeased before the date of the request.

Subd. 2. Leases and management contracts.

(a) A public officer or agency that is authorized by law to lease or enter into a management contract with respect to state bond financed property shall comply with this subdivision. A reference to a lease or management contract in this subdivision includes any amendments, modifications, or alterations to the referenced lease or management contract and refers to the lease wherein the public officer or agency is the lessor of the state bond financed property and the other contracting party is the lessee.

(b) The lease or management contract may be entered into for the express purpose of carrying out a governmental program established or authorized by law and established by official action of the contracting public officer or agency, in accordance with orders of the commissioner intended to ensure the legality and tax-exempt status of bonds issued to finance the property, and with the approval of the commissioner. A lease or management contract must be for a term substantially less than the useful life of the property, but may allow renewal beyond that term upon a determination by the lessor that the lessee has demonstrated that the use continues to carry out the governmental program. If the lessor and lessee do not renew the lease or management contract and if the lessee has contributed to the land and the capital improvements on the state bond financed property, the lessor may agree to reimburse the lessee for its investment in the land and capital improvements. The reimbursement may be paid, at the option of the lessor and lessee, at the time of nonrenewal without a requirement for a prior escrow of funds or at a later date and on additional terms agreed to by the lessor and the lessee. A lease or management contract must be terminable by the contracting public officer or agency if the other contracting

party defaults under the contract or if the governmental program is terminated or changed, and must provide for program oversight by the contracting public officer or agency. The expiration or termination of a lease or management agreement does not require that the state bond proceeds be repaid or that the property be sold, so long as the property continues to be operated by, or on behalf of, the public officer or agency for the intended governmental program. Money received by the public officer or agency under the lease or management contract that is not needed to pay and not authorized to be used to pay operating costs of the property, or to pay the principal, interest, redemption premiums, and other expenses when due on debt related to the property other than state bonds, must be:

(1) paid to the commissioner in the same proportion as the state bond financing is to the total public debt financing for the property, excluding debt issued by a unit of government for which it has no financial liability;

(2) deposited in the state bond fund; and

(3) used to pay or redeem or defease bonds issued to finance the property in accordance with the commissioner's order authorizing their issuance.

The money paid to the commissioner is appropriated for this purpose.

(c) With the approval of the commissioner, a lease or management contract between a city and a nonprofit corporation under section 471.191, subdivision 1, need not require the lessee to pay rentals sufficient to pay the principal, interest, redemption premiums, and other expenses when due with respect to state bonds issued to acquire and better the facilities.

Subd. 3. Sale of property.

A public officer or agency shall not sell any state bond financed property unless the public officer or agency determines by official action that the property is no longer usable or needed by the public officer or agency to carry out the governmental program for which it was acquired or constructed, the sale is made as authorized by law, the sale is made for fair market value, and the sale is approved by the commissioner. If any state bonds issued to purchase or better the state bond financed property that is sold remain outstanding on the date of sale, the net proceeds of sale must be applied as follows:

(1) if the state bond financed property was acquired and bettered solely with state bond proceeds, the net proceeds of sale must be paid to the commissioner and deposited in the state treasury; or

(2) if the state bond financed property was acquired or bettered partly with state bond proceeds and partly with other money, the net proceeds of sale must be used: first, to pay to the state the amount of state bond proceeds used to acquire or better the property; second, to pay in full any outstanding public or private debt incurred to acquire or better the property; third, to pay interested public and private entities, other than any public officer or agency or any private lender already paid in full, the amount of money contributed to the acquisition or betterment of the property; and fourth, any excess over the amount needed for those purposes must be divided in proportion to the shares

contributed to the acquisition or betterment of the property and paid to the interested public and private entities, other than any private lender already paid in full, and the proceeds are appropriated for this purpose. In calculating the share contributed by each entity, the amount to be attributed to the owner of the property shall be the fair market value of the property that was bettered by state bond proceeds at the time the betterment began.

When all of the net proceeds of sale have been applied as provided in this subdivision, this section no longer applies to the property.

Subd. 3a. Involuntary sale of property.

Notwithstanding subdivision 3, this subdivision applies to the sale of state bond financed property by a lender that has provided money to acquire or better the property. Purchase by the lender in a foreclosure sale, acceptance of a deed in lieu of foreclosure, or enforcement of a security interest in personal property, by the lender, is not a sale. Following purchase by the lender, the lender shall not operate the property in a manner inconsistent with the governmental program established as provided in subdivision 2, paragraph (b). The lender shall exercise its best efforts to sell the property to a third party as soon as feasible following acquisition of marketable title to the property by the lender. A sale by the lender must be made as authorized by law and must be made for fair market value.

Subd. 4. Relation to other laws.

This section applies to all state bond financed property unless otherwise provided by law.

Subd. 5. Program funding.

Recipients of grants from money appropriated from the bond proceeds fund must demonstrate to the commissioner of the agency making the grant that the recipient has the ability and a plan to fund the program intended for the facility. A private nonprofit organization that leases or manages a facility acquired or bettered with grant money appropriated from the bond proceeds fund must demonstrate to the commissioner of the agency making the grant that the organization has the ability and a plan to fund the program intended for the facility.

Subd. 6. Match requirements.

Recipients of grants from money appropriated from the bond proceeds fund may be required to demonstrate a commitment of money from nonstate sources. This matching money may be pledged payments that have been deposited into a segregated account or multiyear pledges that are converted into cash or cash equivalent through a loan or irrevocable letter of credit from a financial institution. The loan or irrevocable letter of credit may be secured by a lien on the state bond financed property.

Subd. 7. Ground lease for state bond financed property.

A public officer or agency, as lessee, may lease real property and improvements that are to be acquired or improved with state bond proceeds. The lease must be for a term

equal to or longer than 125 percent of the useful life of the property. The expiration of the lease upon the end of its term does not require that the state be repaid or that the property be sold and upon the expiration the real property and improvements are no longer state bond financed property.

Subd. 8. General applicability.

(a) This section establishes requirements for the receipt and use of general obligation grants and the ownership and operation of state bond-financed property. General obligation grants may only be issued and used to finance the acquisition and betterment of public lands and buildings and other public improvements of a capital nature that are used to operate a governmental program, and for predesign and design activities for specifically identified projects that involve the operation of a governmental program or activity. A general obligation grant may not be used for general operating expenses, staffing, or general master planning. A public officer or agency that is the recipient of a general obligation grant must comply with this section in its use of the general obligation grant and operation, management, lease, and sale of state bond-financed property. A public officer or agency that uses the proceeds of a general obligation grant for any unauthorized purpose or in violation of this section must immediately repay the outstanding balance of the grant to the commissioner, and a failure to comply authorizes the commissioner to recover the outstanding balance as a setoff against any state aid provided to the public officer or agency.

(b) This section does not create any new authority regarding the ownership, construction, rehabilitation, use, operation, lease management, or sale of state bond-financed property, or the operation of the governmental program that will be operated on the property. Any authority that is needed to enter into a management contract or lease of property, to sell property, or to operate a governmental program or carry out any activity contained in the law that appropriates money for a general obligation grant must be provided by as contained in some other law.

Subd. 9. Grant agreement.

All general obligation grants must be evidenced by a grant agreement that specifies:

- (1) how the general obligation grant will be used;
- (2) the governmental program that will be operated on the state bond-financed property; and
- (3) that the state bond-financed property must be operated in compliance with this section, all state and federal laws, and in a manner that will not cause the interest on the state general obligation bonds to be or become subject to federal income taxation for any reason. A grant agreement must comply with this section, the Minnesota Constitution, and all commissioner's orders, and also contain other provisions the commissioner of the agency making the grant deems appropriate. The commissioner shall draft and make available forms for grant agreements that satisfy the requirements of this subdivision.

Third Order Amending Order of Commissioner of Finance

Relating to Use and Sale of State Bond Financed Property

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8.03. Effective Date

IT IS HEREBY ORDERED by the Commissioner of Minnesota Management and Budget of the State of Minnesota (f/k/a Commissioner of Finance of the State of Minnesota) that the Commissioner's Order entitled "Order of Commissioner of Finance Relating to Use and Sale of State Bond Financed Property" dated July 14, 1994, as subsequently amended by the Commissioner's Orders entitled "Order Amending Order of Commissioner of Finance Relating to Use and Sale of State Bond Financed Property" dated July 20, 1995 and "Second Order Amending Order of Commissioner of Finance Relating to Use and Sale of State Bond Financed Property" dated March 9, 2010, be further amended to read as follows:

Section 1. Authorization and Purpose.

1.01. **Authorization.** This Order is adopted pursuant to the Act for the purpose of establishing requirements to be complied with by Public Officers and Agencies regarding GO Grants and relating to the use or sale of State Bond Financed Property.

1.02. **Purpose.** The purpose of this Order is to ensure that the proceeds of State General Obligation Bonds are used solely for the purposes delineated in the corresponding Bonding Legislation, and that the interest to be paid on such bonds is and will continue to be (whenever possible) exempt from federal income taxation. Essentially, State General Obligation Bonds can be issued only to finance the acquisition and betterment of publicly owned land, buildings or betterments to be used to conduct governmental programs of the State and its instrumentalities and political subdivisions. Where State General Obligation Bonds are to be issued to finance property that is to be leased, managed, operated or otherwise used by a Non-Public Party, or where State Bond Financed Property is to be sold to a Non-Public Party, questions may arise as to the legality and tax-exempt status of the State General Obligation Bonds. Accordingly, the requirements set forth herein are to be complied with by a Public Officer or Agency as to any GO Grant it receives, its operation of any State Bond Financed Property, its entering into lease, management or other similar contracts relating to the use of State Bond Financed Property, and in its sale of State Bond Financed Property in order to ensure the legality and tax-exempt status of the State General Obligation Bonds.

Section 2. **Definitions.** For purposes of this Order the terms defined in this Section shall have the meanings given to them in this Section.

2.01. **"Act"** means Minnesota Statutes, Section 16A.695, as such may be amended, modified or otherwise restated.

2.02. **"Bonding Legislation"** means the legislation that authorizes the issuance of the State General Obligation Bonds and the making of the GO Grant, or creates a program under which a GO Grant is made.

2.03. **"Code"** means the Internal Revenue Code of 1986, as amended, and all treasury regulations, revenue procedures and revenue rulings issued pursuant thereto.

2.04. **"Commissioner"** means the Commissioner of Minnesota Management and Budget of the State of Minnesota, or his or her designated representative.

2.05. **"Counterparty"** means any entity with which a Public Officer or Agency contracts under a Use Contract.

2.06. **"Fair Market Value"** means the price that would be paid by a willing and qualified buyer to a willing and qualified seller as determined by an appraisal of the property that assumes that all liens and encumbrances on the property being sold that negatively affect the value of such property will be paid and released, or the bid price by a purchaser under a public bid procedure after reasonable public notice that assumes that all liens and encumbrances on the property being sold that negatively affect the value of such property will be paid and released.

2.07. **"GO Grant"** means a grant or loan funded with the proceeds of State General Obligation Bonds.

2.08. **"Non-Public Party"** means a private person or entity.

2.09. **"Order"** means this Third Order Amending Order of Commissioner of Finance Relating to Use and Sale of State Bond Financed Property.

2.10. **"Public Officer or Agency"** means an entity specifically identified in the Bonding Legislation or selected through a program administered by the State as the recipient of the GO Grant, which must be a state officer or agency, the University of Minnesota, the Minnesota Historical Society, and any county, home rule charter or statutory city, school district, special purpose district, or any other public entity, or any officer or employee thereof. It does not and may not include the United States or any agency or instrumentality of the United States.

2.11. **"State"** means the State of Minnesota.

2.12. **"State Bond Financed Property"** means ownership of an interest, as described in Section 3.03, in property acquired or bettered in whole or in part with the proceeds of State General Obligation Bonds.

2.13. **"State General Obligation Bonds"** mean general obligation bonds of the State that are authorized by the legislature to be issued under Article XI, Section 5, clause (a) of the Minnesota Constitution, or any bonds issued to refund those bonds, the proceeds of which are used to fund a GO Grant.

2.14. **"Use Contract"** - means a lease, management contract or other similar contract relating to State Bond Financed Property, between a Public Officer or Agency that owns or has jurisdiction over the property and another entity as a Counterparty under such lease, management contract or other similar contract.

Section 3. Application. This Order shall apply only as provided in this Section, and the provisions of Sections 4 through 7 are subject to the provisions of this Section.

3.01. **In General.** This Order applies to transactions involving State Bond Financed Property, regardless of when acquired or bettered, unless otherwise provided by law, or unless such application would impair a contract entered into pursuant to law, which contract was in effect on May 17, 1994.

3.02. **Operation of the State Bond Financed Property.** State Bond Financed Property must be operated by the Public Officer or Agency for the governmental program or purpose for which the GO Grant is made. If a Public Officer or Agency has specific statutory authority, then it may contract with another entity to have such entity operate the required governmental program in the State Bond Financed Property.

3.03. **Ownership Interest.** A Public Officer or Agency that is the recipient of a GO Grant must have a qualifying ownership interest in the State Bond Financed Property, which may be in the form of fee ownership, or a lessee's or grantee's interest in a qualifying long term lease or easement. A qualifying long term lease or easement must (i) create the functional equivalency of fee ownership for the length of its term, and (ii) be for a term that is equal to or greater than 125% of the useful life of the property that is the subject thereof, or such other period of time specifically authorized by a Minnesota statute, rule or session law. The Public Officer or Agency must be the lessee or grantee under the qualifying long-term lease or easement.

3.04. **Term.** State Bond Financed Property shall be subject to the Act and this Order for a time period equal to 125% of the useful life of the State Bond Financed Property or until such property is sold in accordance with Section 5, and thereafter such property shall no longer be State Bond Financed Property.

Section 4. Requirements for Use Contracts.

4.01. Statutory Authorization.

(a) A Use Contract can be entered into only where authorized by state law other than the Act; the Act itself does not authorize, but only regulates, such contracts.

(b) A Use Contract must comply with the substantive and procedural provisions of the state law authorizing it, the Act, and the requirements of this Order.

4.02. Requirements for Use Contracts. Use Contracts must fully comply with all of the following requirements.

(a) A Use Contract must be entered into for the express purpose of carrying out a governmental program established by law or authorized by law and established by official action of the contracting Public Officer or Agency. The governmental program, its purpose, and the statutory authority for the governmental program must be specifically set forth in the Use Contract.

(b) The term of a Use Contract, including all renewal terms that are solely at the option of the Counterparty, shall be substantially less than the useful life of the property to which it relates. Ordinarily a Use Contract term not exceeding 50% of the useful life of the property to which it relates will be considered to be for a period substantially less than the useful life of such property. A Use Contract may allow renewal beyond the end of the original (or any previous renewal) term during the last six (6) months of an existing term, upon determination by the Public Officer or Agency by official action that such renewal is necessary or desirable to continue to carry out the governmental program to be operated under the Use Contract and that the Public Officer or Agency wants the Counterparty to continue in the Use Contract. Under extraordinary circumstances the Commissioner may, at his or her sole option and discretion, authorize a renewal prior to the last six (6) months of an existing term upon compliance with all other requirements.

(c) A Use Contract must provide for program oversight by the Public Officer or Agency. This requirement will be deemed to have been satisfied if the Use Contract requires the Counterparty to provide to the Public Officer or Agency an initial program implementation plan and, at least annually, a program evaluation report and a program budget showing program revenues and expenses.

(d) A Use Contract must allow for termination by the Public Officer or Agency in the event of default by the Counterparty or in the event the governmental program is terminated or changed, and may provide for notice of default for a specified period which is reasonable under the circumstances prior to termination.

(e) A Use Contract must require the Counterparty to pay all costs of operation and maintenance of the property to which it relates, unless the Public Officer or Agency is authorized and agrees to pay such costs pursuant to state law. A Use Contract need not require the Counterparty to pay to the Public Officer or Agency any compensation for use of the property to which it relates unless required by a state law other than the Act or by the Commissioner.

(f) A percentage of all moneys received by a Public Officer or Agency pursuant to a Use Contract in excess of the amount needed and authorized to be used to pay operating costs of the property to which it relates, or to pay the principal, interest, redemption premiums, and other expenses when due on debt related to such property other than State General Obligation Bonds, must be paid to the Commissioner by the Public Officer or Agency. Such percentage shall be determined by the Commissioner and, absent circumstances which would indicate a different method, will be determined by dividing the total principal amount of all GO Grants issued with respect to such property by the total principal amount of all public debt financing incurred with respect to such property by the Public Officer or Agency (other than debt issued by the Public Officer or Agency for which it has no financial liability), without regard to the amount of GO Grants outstanding at any time.

4.03. Approval by Commissioner.

(a) No Public Officer or Agency shall enter into a Use Contract, or the renewal or amendment of an existing Use Contract, without the prior written approval of the Commissioner.

(b) Proposed Use Contracts, renewals and amendments of a Use Contract, and the related information described below, should be submitted to the Commissioner not less than 60 days before their proposed date of execution. Such related information should include, if not evident from the Use Contract: (i) the state law authorizing the Public Officer or Agency to enter into the Use Contract, (ii) the name, address, nature, financial condition, and reason for selection of the Counterparty, (iii) the initial or current program implementation plan and budget (except in cases of leases of excess property), and (iv) other information deemed relevant by the Public Officer or Agency. The Commissioner will endeavor to provide approvals or comments requiring any changes needed within a reasonable period after receipt of the proposed Use Contract and the related information, but failure to approve or provide comments on a proposed Use Contract shall not constitute approval.

4.04. Tax Considerations. The Public Officer or Agency shall, upon direction by the Commissioner, take, and/or require the Counterparty to take, such actions and furnish such documents to the Commissioner as the Commissioner determines to be necessary to ensure that the interest to be paid on the State General Obligation Bonds issued to finance the property to which the Use Contract relates is exempt from federal income taxation. Such actions may include either: (i) compliance with procedures intended to classify the State General Obligation Bonds as a "qualified bond" within the meaning of Section 141(e) of the Code; or (ii) changing the nature and/or terms of the Use Contract so that it complies with the Code.

Section 5. Guidelines and Procedures for Sale of Bond Financed Property.

5.01. Authorization of Sales.

(a) State Bond Financed Property can be sold or transferred only where authorized by state law; the Act itself does not authorize, but only regulates, such transactions.

(b) A sale or transfer of State Bond Financed Property must comply with substantive and procedural provisions of the state law authorizing it, the Act, and the requirements of this Order.

5.02. Requirements for Sales. State Bond Financed Property may only be sold or transferred in accordance with the following provisions.

(a) Except as provided in subparagraphs (b) and (d) of this Section 5.02, no Public Officer or Agency shall sell or transfer any interest in State Bond Financed Property unless the Public Officer or Agency first determines by official action that the property is no longer useable or needed to carry out the governmental program for which it was acquired, constructed, or bettered, and the sale is made for Fair Market Value and approved by the Commissioner.

(b) The acquisition of State Bond Financed Property by a lender in satisfaction of a debt by foreclosure sale, acceptance of a deed in lieu of foreclosure or by enforcement of a security interest is not a sale; however, a subsequent sale by the lender is subject to the Act and this Order and must be made as authorized by law and for Fair Market Value. While held by the lender the State Bond Financed Property shall not be operated in a manner inconsistent with the governmental program established with respect to the property. The lender shall exercise its best efforts to sell the State Bond Financed Property to a third party as soon as feasible following acquisition of marketable title to such property.

(c) When all of the net proceeds of sale of any State Bond Financed Property have been applied as provided in Section 5.04, then the Act and this Order will no longer apply to such property, and such property will no longer be considered to be State Bond Financed Property.

(d) State Bond Financed Property may be transferred by a Public Officer or Agency to another public entity for a nominal consideration where authorized by state law, if the transferor Public Officer or Agency determines by official action that the State Bond Financed Property to be transferred is no longer useable or needed to carry out the governmental program for which it was acquired or constructed and the transferee public entity determines by official action that the property is needed or useful for a governmental program of the transferee authorized in such state law, it is willing and able to operate such governmental program on or in such property, the official action is filed with the Commissioner, and the transferee public entity acknowledges and agrees that the operation and sale of the property by the transferee is subject to the provisions of the Act and this Order.

(e) The provisions contained in Minnesota Statutes, Section 15.16 shall control over any inconsistent provisions contained in this Section 5.02. So much of the moneys transferred to a state department or agency as a result of the transfer of control of State Bond Financed Property as is necessary to pay and redeem or defease outstanding State General Obligation Bonds issued to finance the acquisition or betterment of the property, shall be transferred to the state bond fund and used for this purpose.

5.03. Approval by Commissioner.

(a) No Public Officer or Agency shall enter into a contract for the sale of State Bond Financed Property or any amendment thereto affecting the sale price without the written approval of the Commissioner.

(b) Proposed sale contracts and amendments, and the related information described below, should be submitted to the Commissioner not less than 60 days before their planned date of execution. Such related information should include, if not evident from the sale contract: (i) a specific reference to the state law that authorizes the sale, (ii) the name, address and nature, if known, of the purchaser, (iii) the proposed method of sale, (iv) the sale price and how it was determined, (v) any appraisal upon which the sale price is based, and (vi) other information deemed relevant by the Public Officer or Agency. The Commissioner will endeavor to provide approvals or comments regarding any needed changes within a reasonable period after receipt of the proposed sale contract and the related information, but failure to approve or provide comments on a proposed sale contract shall not constitute approval.

5.04. Distribution of Sale Proceeds. The proceeds of a sale of State Bond Financed Property shall be distributed as follows if any State General Obligation Bonds remain outstanding or if all of the State General Obligation Bonds have been repaid or redeemed:

(a) If the State Bond Financed Property that is sold was acquired or bettered solely with the proceeds of State General Obligation Bonds, then all of the net proceeds of such sale shall be paid to the Commissioner.

(b) If the State Bond Financed Property that is sold was acquired or bettered partly with proceeds of State General Obligation Bonds and partly with other money, then the net proceeds of such sale shall be used: (i) first, to pay to the Commissioner an amount equal to that portion of any GO Grants relating to the State Bond Financed Property that have not already been repaid to the Commissioner; (ii) second, to pay in full any outstanding public or private debt incurred to acquire or better the State Bond Financed Property that was consented to in writing by the Commissioner; (iii) third, to reimburse public and private entities for their interest in the State Bond Financed Property and all betterments made thereto other than betterments paid for with proceeds of debt repaid under subparagraph (b)(ii) of this Section 5.04, and (iv) the remaining portion of such net proceeds shall be divided among and paid to the interested public and private parties, including the State, which provided money for such acquisition or betterment (other than any private lender already paid in full), in proportion to the amounts of money provided by them for such purpose.

Section 6. Matching Funds and Full Funding Requirement.

6.01. Full Funding of the Project. Notwithstanding any match requirements imposed by the Bonding Legislation, the Public Officer or Agency must establish to the Commissioner that in addition to the GO Grant it has available, or sufficient funds have been committed, to fully pay for the project as required by Minn. Stat. Sec. 16A.502.

6.02. Use of Loans and Letters of Credit. The proceeds of a loan or a letter of credit may be used to meet any matching or full funding requirement as long as any lien to secure repayment thereof acknowledges the existence of and is subordinate to the Public Officer's or Agency's interest in the State Bond Financed Property and the provisions contained in the grant or loan agreement referred to in Section 7.01.

6.03. Cost Savings. If the full amount of the GO Grant and any matching funds imposed by and contained in the Bonding Legislation are not needed, then, unless language in the Bonding Legislation indicates otherwise, the GO Grant shall be reduced by the amount not needed.

Section 7. Grant and Loan Agreements; Title Records.

7.01. Grant and Loan Agreements. Every state officer or agency to which proceeds of State General Obligation Bonds are appropriated to fund a GO Grant to a Public Officer or Agency shall enter into a grant or loan agreement

with respect to such proceeds whereby the Public Officer or Agency acknowledges that the operation, use, sale and transfer of the State Bond Financed Property are subject to the provisions of the Act and this Order, and that such property shall not be used or operated in any manner that would cause the interest on the State General Obligation Bonds to be or become subject to federal income taxation, due to their classification as "private activity bonds" within the meaning of Section 141 of the Code, or as "arbitrage bonds" within the meaning of Section 148 of the Code, or for any other reason.

7.02. Title Records.

(a) Except as provided in subparagraph (b) below, every Public Officer or Agency that expends any portion of a GO Grant to acquire or better real property shall, not later than 30 days after the first such expenditure or as soon thereafter as practical, cause to be recorded in the official real estate title records maintained by the county recorder for the county or counties in which such property is located, a declaration or other appropriate instrument in the form or substantially the same form attached hereto as Exhibit 1.

(b) If all or any portion of a GO Grant will be expended to acquire or better real property within roads, highways or utility or transit corridors, easements or rights of way, and the recording of the declaration otherwise required by subparagraph (a) above against such property would be unduly onerous or impracticable, upon written request by the Public Officer or Agency, the Commissioner may determine that a declaration need not be recorded against the property within such roads, highways or utility or transit corridors, easements or rights of way and instead shall require that the Public Officer or Agency submit a certification acknowledging that the property is bond financed property within the meaning of Minn. Stat. Sec. 16A.695, is subject to the requirements imposed by such statute, and cannot be sold, encumbered or otherwise disposed of without the approval of the Commissioner of Minnesota Management and Budget. The certification may be included in the grant or loan agreement referenced in Section 7.01 and may contain a description or diagram of the real property rather than a legal description. Such certification need not be recorded. Such property shall still be considered to be State Bond Financed Property and is subject to the Act and all other provisions of this Order.

(c) Upon request and upon full compliance with the provisions of this Order and when appropriate, the Commissioner shall execute and deliver a written release evidencing the release of the subject property from the provisions of the Act and this Order.

Section 8. Amendments; Publication; Effective Date.

8.01. Amendments. The Commissioner retains the right to amend this Order at any time as necessary to accomplish the purposes of the Act.

8.02. Publication. The Commissioner intends to publish this Order and any amendments thereto in such manner and at such times as are likely to provide access to its contents by all affected persons, but the Order or any amendment shall be effective upon its issuance without regard to its publication.

8.03. Effective Date. This Order is effective as of its date of execution set forth below.

Executed August 26, 2010

Tom J. Hanson

Tom J. Hanson, Commissioner

Minnesota Management and Budget

ATTACHMENT 1 DECLARATION

The undersigned, as owner of fee title to the real property legally described on Exhibit A, which is attached hereto and made a part hereof ("Property"), hereby declares that title to the Property is hereby subject to the following restriction:

The Property is bond financed property within the meaning of Minn. Stat. § 16A.695 as amended, and cannot be sold, mortgaged or otherwise disposed of by the public officer or agency which has jurisdiction over it or owns it without the approval of the Commissioner of Minnesota Management and Budget, which approval must be evidenced by a written statement signed by the Commissioner of Minnesota Management and Budget and attached to the deed, mortgage or instrument used to sell, mortgage or otherwise dispose of the Property.

Title to the Property shall remain subject to this restriction for 125% of the useful life of the Property, at which time it shall be released therefrom by a written release in recordable form signed by the Commissioner of Minnesota Management and Budget, and such written release is recorded in the real estate records relating to the Property. This Declaration may not be terminated, amended, or in any way modified without the express written consent of the Commissioner of Minnesota Management and Budget.

Dated: _____, _____

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, _____ by _____, the _____ of _____, a _____ under the laws of _____, on behalf of the _____.

Notary Public

This Instrument Was Drafted By:

EXHIBIT A

